

file 3.1

Office of the Attorney General
Washington, D. C. 20530

April 29, 1981

MEMORANDUM

TO: Heads of Offices, Boards,
Divisions and Bureaus

FROM: William French Smith *WFS*
Attorney General

SUBJECT: Unauthorized Disclosures

All of us in the Department of Justice from time to time deal with information that should not be made public. We are bound ethically to respect the confidentiality of privileged information that we acquire or produce as attorneys representing the United States. The Privacy Act and other laws require us to protect the security of certain kinds of personal information that we may learn about. Most important, those of us who have knowledge of classified information or material relating to the national security have a duty to protect that information by adhering to applicable security regulations.

Several instances of the unauthorized disclosure of classified or other nonpublic information have recently come to my attention. Depending upon the circumstances, such "leaks" may be unlawful, contrary to applicable regulations, or unprofessional. In addition, such unauthorized disclosures undermine the confidence of client agencies in the Department of Justice and thus impair our ability to accomplish the important responsibilities assigned to us.

It will be my policy to deal strictly with cases of unauthorized disclosure, including both national security information as well as other information that is properly not in the public domain. I expect that the head of each office, board, division and bureau will assist me in implementing this policy.

National Security Information

A new regulation on this subject has recently been issued. DOJ Order No. 920-80 (Dec. 10, 1980), to be codified at 28 C.F.R. pt. 17. I would remind you and your Security Programs Managers of the duties imposed upon you in subparts K and L to implement the regulation and report violations to the Department

Security Officer and the Office of Professional Responsibility.

One aspect of this regulation deserves emphasis. Administrative sanctions are provided not only for the knowing and willful disclosure of classified information but also for the compromise of classified information through negligence. In addition, the repeated improper marking and handling of classified documents may constitute grounds for adverse administrative action, even if no unauthorized disclosure has yet occurred.

In summary, instances of the deliberate disclosure of national security information must be carefully investigated and consideration given to all appropriate sanctions, including criminal prosecution. Careless handling of classified information will also be met with appropriate administrative sanctions.

Other Nonpublic Information

Much of the unclassified information we handle in the Department of Justice must be kept confidential. Examples include privileged attorney-client communications or attorney work-product, criminal investigative and grand jury materials, and tax or proprietary information. Such information is required to be kept confidential by statutes such as the Privacy Act, by court orders and by numerous departmental regulations. See, e.g., 28 C.F.R. 16.56(a), 45.735-10 & 50.2.

The Counsel on Professional Responsibility reviews and investigates reports of employee conduct that violates law, regulations or applicable standards of conduct. I expect that instances of unauthorized disclosure of nonpublic information will be reported to the Counsel immediately so that they may be investigated appropriately.

Conclusion

The Freedom of Information Act provides a mechanism for the disclosure of information that should properly be made public, and decisions to withhold information are subject to administrative and judicial review. Our Office of Public Affairs and Office of Legislative Affairs are devoted to providing the public and Congress with information about the Department and its activities. I have no desire to prevent access to information that the public is entitled to know. However, employees of the Department of Justice who circumvent these established procedures for public disclosure do so at their peril. The unauthorized disclosure of classified or other nonpublic information will not be tolerated.